OCAMPO *v.* UNITED STATES.

ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

No. 270. Argued March 12, 13, 1914.—Decided May 25, 1914.

Section 2 of act No. 612 of the Philippine Commission of February 3, 1903, providing that in cases triable before the Court of First Instance in the City of Manila the accused should not be entitled as of right to a preliminary examination in any case in which the prosecuting attorney after due investigation shall have presented an information against him, necessarily operated to repeal inconsistent provisions previously in force in the City of Manila.

The Philippine Bill of Rights, as contained in § 5 of the act of July 1, 1902, contains no specific requirement, such as is contained in the Fifth Amendment, of a presentment or indictment by grand jury, nor is such a requirement included within the guaranty of due process of law.

The guaranty of equal protection of the law in the Philippine Bill of Rights does not require territorial uniformity. It is not violated if all persons within the territorial limits of their respective jurisdictions are treated equally.

Section 2 of Act No. 612 is not in conflict with that paragraph of § 5 of the act of July 1, 1902, which provides that no warrant shall issue but upon probable cause supported by oath or affirmation; a pre-

of his assistants may, if he deems it wise, conduct investigations in respect to crimes, misdemeanors and violations of ordinances by taking oral evidence of reputed witnesses, and for this purpose may, by subpœna, summon witnesses to appear and testify under oath before him, and the attendance or evidence of an absent or recalcitrant witness may be enforced by application to the municipal court or the Court of First Instance."

It was this procedure that was followed in the present case. If Act No. 612 is consistent with the Declaration of Rights contained in § 5 of the act of Congress of July 1, 1902, there can be no question that it necessarily operates to repeal, with respect to the City of Manila, inconsistent provisions previously in force there, as above mentioned.

Section 5 of the act of Congress contains no specific requirement of a presentment or indictment by grand jury, such as is contained in the Fifth Amendment of the Constitution of the United States. And in this respect the Constitution does not, of its own force, apply to the Islands. *Hawaii* v. *Mankichi*, 190 U. S. 197; *Dorr* v. *United States*, 195 U. S. 138; *Dowdell* v. *United States*, 221 U. S. 325, 332.

That the requirement of an indictment by grand jury is not included within the guaranty of "due process of law" is of course well settled. *Hurtado* v. *California*, 110 U. S. 516; *McNulty* v. *California*, 149 U. S. 645; *Dowdell* v. *United States, supra; Lem Woon* v. *Oregon*, 229 U. S. 586, 589, and cases cited.

It is contended that since Act No. 612 denies to the inhabitants of Manila the right to a preliminary examination which is accorded to all other people in the Islands, it denies the equal protection of the laws guaranteed by the act of Congress. But it was long ago decided that this guaranty does not require territorial uniformity. In *Missouri* v. *Lewis*, 101 U. S. 22, 30, this court (by Mr. Justice Bradley) said:

"The last restriction [of the Fourteenth Amendment],

as to the equal protection of the laws, is not violated by any diversity in the jurisdiction of the several courts as to subject-matter, amount, or finality of decision, if all persons within the territorial limits of their respective jurisdictions have an equal right, in like cases and under like circumstances, to resort to them for redress. Each State has the right to make political subdivisions of its territory for municipal purposes, and to regulate their local government. As respects the administration of justice, it may establish one system of courts for cities and another for rural districts, one system for one portion of its territory and another system for another portion. Convenience, if not necessity, often requires this to be done, and it would seriously interfere with the power of a State to regulate its internal affairs to deny to it this right. We think it is not denied or taken away by anything in the Constitution of the United States, including the amendments thereto."

And see *Hayes* v. *Missouri*, 120 U. S. 68, 72; *Chappell Chemical Co.* v. *Sulphur Mines Co.* (No. 3), 172 U. S. 474; *Maliett* v. *North Carolina*, 181 U. S. 589, 598.

It is, however, further contended that Act No. 612 only undertakes to deny to the inhabitants of the city the right to a preliminary investigation when the prosecuting attorney sees fit to conduct an *ex parte* examination, and that it does not cover the subject of probable cause for the arrest of the accused, or affect the right accorded by §§ 12 and 13 of General Orders, No. 58, and by that paragraph of § 5 of the act of Congress of July 1, 1902, which declares "That no warrant shall issue but upon probable cause, supported by oath or affirmation." In overruling this contention the Supreme Court of the Philippine Islands followed its previous rulings in *United States* v. *Wilson*, 4 Phil. Rep. 317, 322; *United States* v. *McGovern*, 6 Phil. Rep. 621, 623; *United States* v. *Raymundo*, 14 Phil. Rep. 416, 436.

It is insisted that the finding of probable cause is a judicial act, and cannot properly be delegated to a prosecuting attorney. We think, however, that it is erroneous to regard this function, as performed by committing magistrates generally, or under General Orders, No. 58, as being judicial in the proper sense. There is no definite adjudication. A finding that there is no probable cause is not equivalent to an acquittal, but only entitles the accused to his liberty for the present, leaving him subject to rearrest. It is expressly so provided by § 14 of General Orders, No. 58, as it is by § 2 of Act 194, above quoted. Such was the nature of the duty of a committing magistrate in the common-law practice, and it is recognized in Rev. Stat., § 1014. *Benson* v. *McMahon*, 127 U. S. 457, 462, 463; *In re Luis Oteiza y Cortes*, 136 U. S. 330, 335; *Todd* v. *United States*, 158 U. S. 278, 283. In short, the function of determining that probable cause exists for the arrest of a person accused is only *quasi*-judicial, and not such that, because of its nature, it must necessarily be confided to a strictly judicial officer or tribunal. By § 9 of the act of July 1, 1902 (32 Stat. 691, 695, c. 1369), Congress enacted: "That the Supreme Court and the courts of first instance of the Philippine Islands shall possess and exercise jurisdiction as heretofore provided and such additional jurisdiction as shall hereafter be prescribed by the Government of said Islands, subject to the power of said government to change the practice and method of procedure. The municipal courts of said Islands shall possess and exercise jurisdiction as heretofore provided by the Philippine Commission, subject in all matters to such alteration and amendment as may be hereafter enacted by law;" etc. Here we find clear warrant for modifications of the practice and procedure; and since § 5 of the same act (quoted above) does not prescribe how "probable cause" shall be determined, it is, in our opinion, as permissible for the local legislature to confide this duty to a prosecut-

ing officer as to entrust it to a justice of the peace. Consequently, a preliminary investigation conducted by the prosecuting attorney of the City of Manila, under Act No. 612, and upon which he files a sworn information against the party accused, is a sufficient compliance with the requirement "that no warrant shall issue but upon probable cause, supported by oath or affirmation."

The views above expressed render it unnecessary for us to consider whether the objections thus far dealt with were waived by the plaintiffs in error when they gave bond at the time of their arrest.

It is next insisted that the conviction of Ocampo was erroneous for want of evidence that he was a proprietor of the newspaper or participated in the publication of the libel. The law is to be found in Act No. 277 of the Philippine Commission (Phil. Pen. Code 1911, p. 167), of which two sections may be quoted:

"SEC. 2. Every person who wilfully and with a malicious intent to injure another publishes or procures to be published any libel shall be punished by a fine of not exceeding two thousand dollars or imprisonment for not exceeding one year, or both."

"SEC. 6. Every author, editor, or proprietor of any book, newspaper, or serial publication is chargeable with the publication of any words contained in any part of such book or number of each newspaper or serial as fully as if he were the author of the same."

The evidence abundantly supports the conclusion of the courts below that Ocampo was the administrator, manager, and one of the owners of the newspaper known as "El Renacimiento," and there was no error in holding him to be a proprietor within the meaning of § 6.

Finally, it is contended that the Supreme Court of the Philippines had no jurisdiction to increase the punishment of Kalaw. The court was established by Act No. 136 of the Philippine Commission (June 11, 1901), with original

and appellate jurisdiction. By § 18 it was given appellate jurisdiction over the courts of first instance; and by § 39 it was enacted that "The existing Audiencia or Supreme Court is hereby abolished, and the Supreme Court provided by this Act is substituted in place thereof." It is in effect conceded that under the Spanish system the courts of first instance were deemed examining courts, having a sort of preliminary jurisdiction, and that their judgments of conviction or acquittal were not final until the case had been passed upon in the Audiencia or Supreme Court. But it is contended that this was so far changed by General Orders, No. 58, §§ 42, 43, 44, and 50, and by Act No. 194 of the Philippine Commission, § 4 (August 10, 1901), that the judgments of the court of first instance are final unless an appeal be taken. And so it was held, with respect to cases other than capital, in *Kepner* v. *United States*, 195 U. S. 100, 121. But this does not settle the question of the jurisdiction of the Supreme Court of the Islands where an appeal is taken. In the acts referred to, the right of the Government, as well as of the defendant, to appeal from the judgment in a criminal case was recognized. In the *Kepner Case* it was held that § 5 of the act of Congress of July 1, 1902, in declaring that "no person for the same offense shall be twice put in jeopardy of punishment," prevented an appeal by the Government from a judgment of acquittal in the court of first instance. But in *Trono* v. *United States*, 199 U. S. 521, where the defendants appealed from a judgment of the court of first instance, which upon an indictment for murder had found them guilty of the lower crime of homicide, it was held the Supreme Court of the Islands had power to reverse the judgment and find the accused guilty of the higher crime of murder; distinguishing the *Kepner Case*. In *Flemister* v. *United States*, 207 U. S. 372, a judgment of the insular Supreme Court, increasing the sentence imposed by the court of first instance, was affirmed. See,

also, *Dowdell* v. *United States*, 221 U. S. 325, 327; *Pico* v. *United States*, 228 U. S. 225, 230. In short, the appellate jurisdiction of the Supreme Court of the Philippine Islands in criminal cases is not confined to mere errors of law, but extends to a review of the whole case. And such is the settled practice of that court. *United States* v. *Abijan*, 1 Phil. Rep. 83, 85; *United States* v. *Atienza*, 1 Phil. Rep. 736, 738.

Judgment affirmed.